

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Satellite Delivery of Network Signals)	CS Docket No. 98-201
to Unserved Households for)	RM No. 9335
Purposes of the Satellite Home)	RM No. 9345
Viewer Act)	
)	
Part 73 Definition and Measurement)	
of Signals of Grade B Intensity)	

DECLARATION OF JAMES N. DERTOUZOS

I, James N. Dertouzos, hereby depose and say as follows:

1. I am submitting this declaration in support of the comments filed in this matter by PrimeTime 24 Joint Venture ("PrimeTime 24").

2. I am an economist who has been employed as a public policy analyst by the RAND Corporation, a nonprofit research institution funded primarily by government agencies and private foundations. I am also on the faculty of the RAND Graduate School of Policy Studies and have previously taught courses at Stanford, UCLA, and the Annenberg School of Communications at USC. Since receiving my PhD in economics from Stanford University in 1979, I have conducted extensive research on topics related to advertising and the economics of the broadcasting, cable, satellite, and newspaper industries. My nonproprietary policy research has been sponsored by the Federal Trade Commission, the Department of Justice, the Defense Department, the National Science Foundation, the Department of Labor, the Small Business Administration, the U.S. Army, and numerous nonprofit organizations. I was a principal expert witness on behalf of the Federal Communications Commission in defending the "must-carry" rules in Turner Broadcasting Systems.

Inc. v. Federal Communications Commission, 117 S. Ct. 1174 (1997). On two occasions, I provided Congressional testimony on the causes and impacts of economic concentration in the mass media industries. I have also conducted research as an independent consultant to the National Association of Broadcasters, the National Cable Television Association and a variety of firms and private organizations such as Ameritech, Bell South, Lenfest Communications, Major League Baseball, Telecommunications, Inc., and Viacom. A copy of my CV is attached hereto as Attachment A.

3. As outlined in the NPRM, the Federal Communications Commission is considering adopting Satellite Home Viewer Act eligibility criteria different from those used by a federal court in Miami. In considering whether to adopt a less restrictive standard, the FCC has asked for comments on how a modified standard (which would increase the number of presumptively eligible subscribers) would affect the policy of localism, which the NPRM notes is a policy goal that has been central to broadcast regulation ever since the Radio Act of 1927 (see, 47 U.S.C. § 307 (b) (1997)).

4. Localism involves the availability of information, news, and entertainment that is of interest to the local community. On the one hand, restrictions on the availability of network programming by satellite are thought to protect the economic viability of the network affiliates that are one source of such local content. On the other hand, this policy comes at a cost since it constrains consumer choices, handicaps satellite providers in their efforts to compete with the cable industry, and prevents many households from obtaining a network signal on acceptable terms (cost and signal quality).

5. In my view, a substantially less restrictive policy would not jeopardize localism for the following reasons:

a. An increase in satellite viewership of distant signals does not necessarily reduce local affiliate viewership. This is because satellite viewers would not have watched the local affiliate anyway because of poor picture quality.

b. My own econometric analysis (described below) indicates that there was no significant rating erosion for network affiliates under an eligibility standard that involved asking satellite subscribers whether or not they received an acceptable over the air signal.

c. Even if affiliates were to suffer losses in viewers, it is extremely unlikely that the viability of network affiliates would be affected. The average network affiliate earns huge returns (cash flows exceed 40% of net revenues) that significantly exceed those earned by independent stations.¹ It is worth noting that "must-carry" requirements have not been adopted out of concern for network affiliates. Rather, they are designed to protect a smaller number of marginal independent stations that could fail in the absence of carriage by cable operators.

d. The logic for protecting network affiliates from assumed competition in order to promote localism is inherently flawed. Higher profits for network affiliates do not translate into more local programming.² Indeed, competition would enhance -- not diminish-- the policy goal of

¹ The average affiliate of one of the three networks ABC, CBS, and NBC had a cash flow of over \$7.6 million on a net revenue base of \$18.4 million in 1995. For independent stations, the average percentage was 1/3 less, at 31%. See the 1996 Television Financial Report, National Association of Broadcasters.

² In fact, network affiliates currently produce very little local programming, especially during prime time. For example, the average station affiliated with a network spent a mere 3.7% of its total expenses on production (1996 *Television Financial Report*, National Association of Broadcasters). (continued...)

increasing flows of local information, news, and entertainment to communities. This is because local stations, faced with assumed greater competition (from satellite providers) in the provision of network fare and other "general interest" programming, would have greater incentives to invest more in programming.³ Further, affiliates will wish to emphasize their comparative advantage vis-a-vis imported signals which is in the provision of local and/or regional content. In other words, a predictable competitive response would be for the local affiliate to carry more and higher quality content of community interest.

6. To examine the economic impact of PrimeTime 24's delivery of distant network signals on local broadcasters, I examined the correlation between the change in network station Nielsen ratings of all CBS, NBC, ABC and Fox network stations (by share of audience during prime time) between the periods November 1996 and July 1997. The average network station audience share dropped about 20% between the November 1996 and July 1997 periods. Using a regression model (reported and described in Tables One and Two, attached), I compared the changes in affiliate ratings with the changes in PrimeTime 24 subscriber penetration in each DMA over a similar period

²(...continued)
Broadcasters).

³ The positive effect of competition on the provision of programming, news, and information has been well-documented for a variety of media. For example, broadcast stations facing additional local competitors spend significantly more on local news and features, despite earning lower advertising revenues (see Harvey J. Levin, *Facts and Fancy in Television Regulation*, New York: Russell Sage Foundation 1980, p. 146.). Similar effects have been found in the cable television and newspaper industries (see James N. Dertouzos and Steven S. Wildman, "Regulatory Standards: The Effects of Broadcast Signals on Cable Television," *A Communication Cornucopia: Markle Foundation Essays on Information Policy*, Brookings Institution 1998, Washington D.C. pp. 499-517 and James N. Dertouzos and William B. Trautman, "Economic Effects of Media Competition: Estimates from a Model of the Newspaper Firm," *Journal of Industrial Economics*, vol. 39, September 1990, pp. 1-14.

(December 1996 and November 1997). Penetration is the percentage of all television households in a DMA that subscribe to PrimeTime 24. PrimeTime 24's penetration can vary significantly from DMA to DMA. Over the relevant period, the average DMA showed a 1.6% point increase in PrimeTime 24 penetration, from 3.3% to 4.9%.

7. If PrimeTime 24 were affecting the ratings of network stations, one would expect to see the network share to have generally declined more in those DMAs where PrimeTime 24 experienced a greater percentage increase in penetration. As indicated, this was not the case. While the percentage change in PrimeTime 24 penetration was negatively correlated with network station ratings, the degree was so slight as to be not significantly different from zero. Accordingly, I conclude that PrimeTime 24 has had no measurable adverse economic effects on network affiliates.⁴

8. Insofar as some households that are served by local affiliates would prefer to view a distant network, restricting those households' ability to obtain preferred programming is unequivocally inefficient. By charging a subscription fee that reflects the incremental value of that programming to that household and compensating the broadcasters for any lost advertising revenue, it should be possible to make everybody better off, including subscribers, satellite operators, networks and their local affiliates.

⁴ Furthermore, networks tend to gain (in advertising revenue and license fees) from satellite delivery of their programming.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on December 10, 1998.

James N. Denton

Attachment A
JAMES N. DERTOUZOS

EDUCATION

Ph.D., Economics, 1979, Stanford University B.A., Economics, 1972,
Rutgers University

PROFESSIONAL EXPERIENCE

September 1979-present - Senior Economist (1987-present), Assoc.
Corporate Research Manager (1990-1994), Resident Scholar in
Economics (1990-1994), Assoc. Head Economics & Statistics
Department (1985-1990), RAND, Santa Monica, California
Summer 1995 - Visiting Scholar, W. K. Kellogg Foundation, Battle
Creek, Michigan
Spring 1981-Present - RAND Graduate School Faculty
Winter 1993 - Adjunct Professor, Annenberg School of Communications,
University of Southern California
September 1980-1988 - Visiting Professor, University of California at
Los Angeles
Spring 1979 - Visiting Lecturer, Stanford University
September 1978-79 - Post-Doctoral Research Analyst, National Bureau
of Economic Research
Spring 1977 - Visiting Lecturer, University of Santa Clara
September 1972-73 - Economist, Bureau of Labor Statistics, U.S.
Department of Labor

RESEARCH AREAS

Public Sector Management. Dr. Dertouzos has conducted research for a variety of foundations and Federal agencies on issues related to public sector management. For example, he has been examining the probable consequences of proposed block grant legislation on the delivery of social services (e.g., welfare, medicaid, and job training) for states and counties. He is leading three separate projects that are providing technical assistance to policy makers in Colorado, Missouri, and California. In addition, he recently completed a project that studied organizational barriers to reforming the process by which the government procures goods and services from the private sector. In earlier work for the Department of Defense, Dr. Dertouzos examined some of the principal-agent problems associated with the management of military recruiting personnel.

Labor Markets. Dr. Dertouzos has made several contributions to the literature on labor markets. In work sponsored by the Defense Conversion Board, he has studied the labor market consequences of aerospace procurement cuts. In work funded by the National Science Foundation, he has analyzed the impact of market conditions and work force characteristics on union preferences for employment versus wages. Research conducted on behalf of the U.S. Department of Labor focused on the effect of technological change on employees displaced from newspaper composing rooms. With support from the Sloan Foundation, he has also conducted research on the legal and economic consequences of the increasing labor market liability of employers.

Economics of Mass Media Industries and Advertising. Dr. Dertouzos has worked on several topics related to mass media, property rights, and advertising markets. A particular focus has been on the industrial organization and competition within the mass media industries, including cable television, broadcasting, satellites and newspapers. Different analyses of media markets have been supported by a variety of sponsors, including the National Science Foundation, Federal Trade Commission, U.S. Department of Labor, the Small Business Administration, the National Cable Television Association, the National Association of Broadcasters and the U.S. Department of Justice. In addition, Dr. Dertouzos has directed several studies on the effectiveness of advertising on behalf of the U.S. Army and Office of the Secretary of Defense. Finally, he has studied the economic implications of concentration in a variety of local markets, including retail, employment, and entertainment advertising.

OTHER PROFESSIONAL ACTIVITIES

September 1979-present - Independent consulting services provided to private and public sector organizations, industry associations, and lawyers in matters related to regulatory, anti-trust, and other legal issues. A list of recent activities is attached.

June 1982 - Testimony on Tax Laws and Mergers in the Newspaper Industry (House Ways and Means Subcommittee on Select Revenue Measures)

March 1980 - Testimony on the Impact of Media Concentration (House Small Business General Oversight Subcommittee)

March 1979-August 1979 - Consultant to National Association of Broadcasters (Study of the Recording Industry)

August 1978-December 1979 - Consultant to Federal Trade Commission (Overview of Economics of Mass Communications Industries)

EXTERNAL PAPERS AND PUBLISHED ARTICLES

"Regulatory Standards for Effective Competition: The Effects of Broadcast Signals on Cable Television," in *Convergence and Choice: Markle Readings in Information Policy*, Roger Noll and Monroe Price, eds., Brookings Institution, coauthored, forthcoming.

"The Implications of Employment Liability for Welfare Reform," *Research in Labor Economics*, coauthored, forthcoming.

"Workforce Resistance to Acquisition Reform" *Defence and Peace Economics*, co-authored, forthcoming.

"The Problems with Penetration Standards for Cable," *Journal of Communications Law and Policy*, coauthored, forthcoming.

"Preparing for Welfare Block Grants: Issues Facing California," in *The New Fiscal Federalism and the Social Safety Net*, co-authored, May 1996.

"Employment Effects of Worker Protection: Evidence from the United States", *Employment Security and Labor Markets*, edited by Christoph Buechtemann et al., ILR Press, Cornell University, 1993.

"Manpower Structure and Policies in the U.S. and NATO Europe," in the *International Military and Defense Encyclopedia*, Pergamon-Brassey, September 1992.

"Economic Effects of Media Concentration: Estimates from a Model of the Newspaper Firm," *Journal of Industrial Economics*, co-authored, September 1990.

"Wrongful Termination: Legal and Economic Costs," in *Liability for Employee Grievances*, Workers Compensation Research Institute, Oct. 1988.

Review of Allan Brown, "Commercial Media in Australia," *Information Economics and Policy*, March, 1989.

"Microeconomic Foundations of Recruiter Behavior: Implications for Aggregate Enlistment Models," *Army Manpower Economics*, ed. by Curtis Gilroy, Westview Press, Boulder, Colorado, 1987.

"Scale Economies, Newspaper Chains, and Government Policy," *The American Economist*, June 1982.

"Wage and Employment Determination Under Trade Unionism: The Case of the International Typographical Union," *The Journal of Political Economy*, December 1981, co-authored.

"Union Objectives, Wage Determination, and the International Typographical Union," *Studies in Industry Economics* #111, Department of Economics, Stanford University, December 1979.

"Economic Issues in Mass Communications Industries," *Proceedings of the Symposium on Media Concentration*, Vol. I, Bureau of Competition, Federal Trade Commission, December 1978.

"Media Conglomerates: Chains, Groups, and Cross-ownership," *Proceedings of the Symposium on Media Concentration*, Vol. II, Bureau of Competition, Federal Trade Commission, December 1978.

"A Study of Economic Issues in the Recording Industry," *Studies in Industry Economics* #106, Department of Economics, Stanford University, August 1979, co-authored.

"A Description of Competition in the Newspaper Industry: A Probability Analysis," *Studies in Industry Economics* #68, Department of Economics, Stanford University, June 1976.

"Trends in the Newspaper Industry," *Studies in Industry Economics* #57, Department of Economics, Stanford University, May 1975 co-authored.

RAND REPORTS

The Effectiveness of Military Advertising in the 1990s, co-authored, AB-168-OSD, August 1997.

Implementing Acquisition Reform in the U.S. Army, co-authored, DRR-1258-A, November 1995.

Essays in the Economics of Procurement, co-editor, RAND, MR-462-OSD, October 1994.

The Regional Distribution of Aerospace Procurement Cuts, co-authored, RAND, DRR-776-OSD, July 1994.

Making Technology Reinvestment Work: Suggestions on Managing and Evaluating ARPA's Technology Reinvestment Project, co-authored, RAND, October 1994.

The Decline of the Aerospace Industry: Effects on Workers, co-authored, RAND, DRR-694-OSD, April 1994.

Defense Spending Aerospace, and the California Economy, co-authored, RAND, August 1993.

Labor Market Responses to Employer Liability, co-authored, RAND, R-3989-ICJ, April 1992.

Educational Benefits Versus Bonuses: A Comparison of Recruiting Options, MR-302-OSD, co-authored, October 1994.

The Effects of Military Advertising: Evidence from the Ad Mix Test, RAND, N-2907-FMP, March 1989.

Economies of Group Ownership in the Newspaper Industry: Estimates from a Structural Model, co-authored, RAND, P-7524, January 1989.

Competition and Cooperative Teaming: Economic Considerations, RAND, WD-4227-PA&E, January 1989.

Recruiting Effects of Army Advertising, co-authored, RAND, R-3577-FMP, January 1989.

The Legal and Economic Consequences of Wrongful Termination, co-authored, RAND, R-3602-ICJ, August 1988.

The End of Employment-At-Will: Legal and Economic Costs, RAND, P-7441, May 1988.

The Enlistment Bonus Test, co-authored, RAND, R-3353-FMP, April 1986.

Recruiter Incentives and Enlistment Supply, RAND, R-3065-MRAL, June 1985.

Efficient Contracts, Featherbedding, and Estimating Union Objectives, RAND, N-2018-NSF, May 1985.

Bargaining Responses to the Technology Revolution: The Case of the Newspaper Industry, co-authored, RAND, R-3144-DOL, April 1985.

Newspaper Groups: Economies of Scale, Tax Laws and Merger Incentives, co-authored, RAND, R-2878-SBA, June 1982.

Economic Incentives to Merge: Testimony Before the Subcommittee on Select Revenue Measures, RAND, P-6771, May 1982.

The New Media and the Demand for Studio Production Facilities, co-authored, RAND, P-6698, October 1981.

Media Concentration and Cross-ownership: Testimony Before the Subcommittee on General Oversight and Minority Enterprise, Committee on Small Business, RAND, P-6502, March 1980.

CONSULTING ACTIVITIES SINCE 1990

Pan Asia Venture Capital Corp. vs. San Francisco Newspaper Agency
Superior Court, State of California
Expert on behalf of Defendant (Predatory pricing, damages)
August 1990-February 1991
Deposition
Mr. Royce Schulz, Broad, Schulz, Larson & Wineberg (SF)

DCA Cable vs. Rancho Cucamonga
Superior Court, State of California
Expert on behalf of Plaintiff (Cable television economics)
Deposition and Testimony, 1990
Mr. Joshua Genser, Norris and Norris, Richmond, CA

Consultant to National Cable Television Association
Studies of Effective Competition, Cable Competition Act
Several Reports
November 1989-February 1993

Lencomm, Inc. vs. City of El Cerrito
Expert on behalf of Plaintiff (Possessory interest tax)
Deposition, April 1993
Mr. Joshua Genser, Norris and Norris, Richmond, CA

Consultant to Viacom
Analysis of FCC Benchmark for Cable Rate Regulation
Report, May-July 1993
Mr. Philip V. Permut, Wiley, Rein & Fielding, Washington, DC

Gail Berkeley vs. Lenfest West
Expert on behalf of Defendant (Cable late fee regulation)
Declaration, December 1993
Mr. Joshua Genser, Norris and Norris, Richmond CA

High Technology Careers vs. San Jose Mercury News
United States District Court
Expert on behalf of Plaintiff
(Relevant market for employment advertising, damages)
Deposition and Testimony, February 1991-December 1994
Mr. John Alioto, Alioto & Alioto, San Francisco CA

Turner Broadcasting Inc. vs. Federal Communications Commission
United States District Court
Expert on behalf of Defendant
(Effects of must carry on local media, advertising competition)
Declaration, Rebuttal Declaration, Deposition, March-July 1995.
Mr. John Tyler and Mr. James Gilligan, U.S. Department of Justice

Levine vs. TRW

Superior Court, State of California
Expert on behalf of Defendant
(Aerospace economics, employment discrimination)
September 1995
Mr. Terry Sanchez, Munger, Tolles, and Olson, Los Angeles CA.

Steward-Davis International Inc. vs. Far East National Bank

Superior Court, State of California
Expert on behalf of Defendant
(Terms of credit, defense contracting, damages)
February-May 1996
Mr. Robert Dell Angelo, Munger, Tolles, and Olson, Los Angeles CA.

BellSouth New Zealand vs. Telecom

High Court of New Zealand
Expert on behalf of Plaintiff
(Relevant market, competition in telecommunications)
Affidavit, November 1995-July 1996
Mr. Ross Patterson, Rudd Watts & Stone, Auckland, N.Z.

Manalo vs. Toyota Motor Credit Company

Superior Court, State of California
Expert on behalf of Plaintiffs
(Lease terms, damages)
Declaration, June 1996-March 1997
Ms. Nancy Barron, Esq.
Kemnitzner, Anderson, Barron, & Ogilvie, San Francisco

Playboy Entertainment Group, Inc. vs. United States

United States District Court (Delaware)
Expert on behalf of Defendant
(Economic Impact of Section 505 of Telecommunications Act)
Expert reports, testimony June 1997-March 1998
Mr. James Gilligan, U.S. Department of Justice

DeSoto Broadcasting, Inc. v. Comcast Cablevision of West Florida

U.S. District Court, Middle District of Florida
Expert on behalf of Plaintiff
(Relevant market, media competition)
Expert Report, March 1998
Mr. Michael Eaton, Arent Fox, Washington D.C.

Table One
Variable Description

Variable Label	Mean	Std Dev	Minimum	Maximum
Station Share - Nov 1996	13.6514346	6.6287310	1.0000000	80.0000000
Station Share - July 1997	10.9843049	4.9046784	1.0000000	24.0000000
Primetime subs/TV household -- 1996	3.2686438	1.8802528	0.2346485	10.3643725
Primetime subs/TV household -- 1997	4.9313341	2.9123067	0.5719885	22.3997056

Table Two
Analysis of Network Share Index

Source	DF	Sum of Squares	Mean Square	F Value	Prob>F
Model	4	2.72598	0.68150	31.401	0.0001
Error	833	18.07855	0.02170		
C Total	837	20.80453			

Root MSE	0.14732	R-square	0.1310
1997 Share/1996 Share	0.81024	Adj R-sq	0.1269
C.V.	18.18225		

Parameter Estimates

Variable	DF	Parameter Estimate	Standard Error	T for H0: Parameter=0	Prob > T
Intercept	1	0.885689	0.01247848	70.977	0.0001
Change in Primetime	1	-0.000847	0.00446273	-0.190	0.8495
ABC	1	-0.149386	0.01481701	-10.082	0.0001
CBS	1	-0.035682	0.01474985	-2.419	0.0158
NBC	1	-0.102448	0.01459884	-7.018	0.0001